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ABSTRACT

This report describes the teachers' strike in Los Angeles in spring 1970, and analyzes (1) the events leading up to the strike, (2) the negotiations during the strike, and (3) the aftermath of the strike with its resulting lawsuits. The report is written from the board of education viewpoint, and concludes that more legislation must be designed to cover collective bargaining and strikes. (JF)

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THE ANALYSIS OF A STRIKE

Presented to the
National Organization on Legal Problems of Education
By Jerry F. Halverson, Legal Adviser,
Los Angeles City Schools

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INTRODUCTION

The four and one-half week strike of the Los Angeles City Schools last spring, conducted by the United Teachers--Los Angeles (UTLA), was the largest and longest teachers' strike California has yet experienced. The results of the strike have been difficult to assess, no matter where one might stand on the issue. Certainly it has affected the thinking and actions of every person and organization concerned in any substantial way with the schools.

The strike certainly created deep divisions among the teaching staffs of our 615 schools as well as within UTLA itself. UTLA has lost membership, and the two rival organizations, one which was virtually created through the efforts of teachers who opposed the strike, have become substantially stronger.

It also appeared to have an impact on the State Legislature, although not the kind some would have hoped. The Legislature had been deliberating on legislation designed to divide the School District into 12 or 24 subunits with local boards of education. That plan was adopted amid a great deal of negative legislative comment about the strike. (It was later vetoed by the Governor.)

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The immediate result of the strike was, of course, the strike settlement in the form of a proposed contract, which is at least as comprehensive and as satisfactory to the teachers' organization as any yet adopted by any school district in the United States. The School District has also experienced multiple litigation over the strike. The cases were concerned with the role of certain members of the Board of Education, the validity of the proposed contract, and the organizational structure of the teachers' organization.

BACKGROUND TO THE STRIKE

For many years in Los Angeles, and in most other school districts in the State, the local affiliate of the California Teachers Association (NEA) and the American Federation of Teachers local have been in stiff competition for members. The AFT affiliates had been pressing school districts and the State Legislature to provide collective bargaining and a sole bargaining agent approach to employer-employee relations. The CTA affiliate had been fighting single bargaining agent elections and had been generally adverse to any approach to collective bargaining. With the expansion of teacher organization activity, and because of the difficulties experienced by local boards in their attempts to deal with multiple teacher organizations, the State Legislature adopted in 1961 a somewhat unique approach to school district employer-employee relations.

The most important provision of the 1961 legislation provided for a "Negotiating Council" to be established in each district which

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had two or more certificated employee organizations. The Negotiating Council may be comprised of from 5 to 9 representatives of certificated employee organizations. The number of representatives an organization may have is a function of its size relative to that of other certificated organizations that apply for seats on the Council. In Los Angeles the Council has 9 members, and this year an organization needed approximately 1,600 members to obtain a seat on the Council. The theory behind the legislation is that a board of education may exchange information and proposals with a single body, the Negotiating Council, rather than with multiple teacher organizations.

In 1969 the CTA and AFT affiliates in Los Angeles commenced negotiations looking toward some kind of a merger of the two organizations. In February of 1970 efforts in this direction were consummated with the creation of a new organization known as the United Teachers--Los Angeles. This organization became fully operative upon creation, and the old, underlying organizations were to pass out of existence on December 31, 1970.

Because of the size of its membership, approximately 23,000 out of a District of 26,000 regular day school teachers, UTLA representatives occupied all of the nine seats on the Negotiating Council.

Faced with a vigorous, militant, and apparently united teachers' organization, the Los Angeles City Schools decided to reorganize its efforts in the area of teacher negotiations

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and engaged a lawyer, experienced in the area of labor relations, as its negotiator.

Negotiations commenced in March. UTLA submitted a 67-page "Negotiating Package" and the school district's representative submitted a series of individual proposals and counter proposals relating to subjects contained in the UTLA negotiating package.

While the CTA and AFT affiliates had talked strike in the prior year and UTLA intensified such talk immediately upon its creation, few in the school administration really expected that a strike would take place last year. It was felt that there were too many factors running against the success of any strike action: the teacher organization had no strike fund, there was a philosophical division within UTLA, the State Legislature would obviously not be influenced affirmatively by any strike action, the public as a whole did not have a positive view of the current educational situation and certainly was opposed to any increase in taxes which would be necessary to raise teachers' salaries or to provide any of the other teacher benefits which the organization demanded.

Nevertheless, after only 8 formal negotiating sessions between the Board's negotiator and the Negotiating Council, UTLA obtained a strike vote on Friday, April 10, and the strike commenced on Monday morning, April 13.

NEGOTIATION PROCEDURES

Because we did not believe that there would be a strike, and because both the administration and the Board of Education wanted to develop some kind of comprehensive agreement with the Negotiating Council, we approached the commencement of negotiations in what we believed to be a businesslike way and in a manner best calculated to develop an initial agreement which would serve the interests of the schools and the teachers.

In addition to engaging an experienced and highly qualified attorney from private industry to represent the District in negotiations, we provided him with a full-time assistant from our staff who had an overall knowledge of the District, experience in working with the employee organizations and background information as to the strengths and weaknesses of the organizations and their leaders, their attitudes and tactics.

We also provided the negotiator with an eight-man committee of technical experts who could provide him with information and analysis in every major area falling within the negotiation process.

The negotiator and his team met with the Board of Education and the Superintendent prior to the commencement of negotiations to discuss projected issues and in order to provide the negotiator with authority to accept or reject proposals within

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certain limitations. He also reviewed with the Board his initial proposals in order to gain direction.

In order to organize our thinking and as an aid to planning, we developed a chart which, among other things, estimated and analyzed:

- (a) Objectives desired by the teachers' organization as an outcome of negotiations
- (b) Objectives deemed indispensable by teachers' organization
- (c) Goals desired by School District
- (d) Projected course of negotiations.

We also adopted certain procedural techniques common to all negotiations, such as the following:

- (a) Nothing would be settled until all issues are settled. In this way items can be re-opened and traded if later issues so require.
- (b) Newsletters were issued and press conferences were held concerning the progress of negotiations in order that employees and the public would be kept informed of our position and intentions.
- (c) The Superintendent and Board of Education were kept away from the bargaining table, and away from the back door negotiations and end runs by the organization in order to avoid its attempt to gain something from the Board which it could not gain through negotiations. (The classic ploy utilized by the organization was to claim that the Board's negotiator was "stalling", was not "negotiating in good faith", or lacked the authority to come to any binding agreement at the bargaining table.)

Formal meetings with the Negotiating Council (UTLA) representatives commenced on March 12. We met formally no more than twice each week, with a few additional, informal meetings. All meetings were held in neutral quarters and in private.

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At the second formal meeting with the Negotiating Council we were presented with a 67-page "Negotiating Package" containing a list of 474 demands. It is our feeling in retrospect that the Council did not intend immediate, realistic negotiations over the items in its package, but instead wanted to give the appearance of negotiations to the public and to paint the District as "stalling" and "footdragging" in order to develop the premise for the strike.

We believe that UTLA felt it needed a strike in order to weld together its newly merged membership and to flex its muscle in order to show the Board of Education, the State Legislature, and the public that it had become a potent force in the school system.

We believe this was true because there was no realistic response to our attempts to negotiate on items contained in the 67-page package. For example, we asked which of the items might be considered priority items by UTLA in order that we might commence concrete discussions. We were advised that all of the 474 items were of a priority nature. In addition to this kind of response, there was a great deal of posturing and playing to the news media in an apparent effort to characterize the District as the villain.

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These efforts are not necessarily to be criticized as they are generally legitimate and useful tactics in the bargaining situation. The criticism, I think, should be directed at us, because we failed to recognize that these maneuvers were the prelude to the strike. As I mentioned earlier, we simply did not believe that UTLA would call a strike in the face of so many adverse factors.

After building up a public position that negotiations with the District were not progressing due to the unwillingness of the District or its negotiator to bargain in good faith, UTLA took a strike vote of its membership on Friday, April 10. The vote was affirmative, and the strike commenced on the following Monday, April 13.

COMMENCEMENT OF THE STRIKE

When we learned on or about March 25 that it was very probable that the organization intended to take a strike vote of its membership (although we did not know at that time when the vote would be taken), we discussed with the Board of Education various efforts to mitigate the effects of the proposed strike on the schools. I think it is interesting that the item which received the most emphasis in these discussions, but unfortunately was the least effective, was an injunction. We decided to go after only the organization

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and its leadership and not to serve teachers or middle echelon strike management. If we have to seek another injunction in any future strike, we intend to broaden the group of persons served for reasons mentioned later on.

Development of Strike Plan. In consultations with the attorney whom we engaged as our negotiator and labor relations expert we developed, during the week of March 25, a "Strike Plan" which was intended to utilize every available School District resource in order to reduce the effect of the proposed strike. Included in this strike plan were the following elements:

- (a) A determination of the probable length of the strike, as many important aspects of preparation depend on this factor.
- (b) A decision as to the conditions under which schools would close and who would have the authority to close them. This item is, of course, of paramount consideration, since the immediate objective of the strike would be to close the schools and thereby increase the pressure on the Board of Education to meet the organization's terms. Decisions were also made as to the related question of combining classes within a school, and, where necessary, a method of consolidating two or more schools in one school plan so as to make maximum utilization of school personnel. This latter procedure did, of course, require a standby pupil transportation plan.
- (c) The development of a plan for the use of substitute teachers and non-teaching personnel as teacher replacements. Included in this plan were methods of using, and specific school assignments for, administrative and supervisory personnel, and procedures for the assignment of teacher aides and parental volunteers. I might insert a caveat at this point. Many states have some kind of statutory provision with respect to

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advertising for the recruitment of employees during a strike. California has two such provisions which provide, in effect, that if an employer advertises for employees during a strike, without stating in the advertisement that a strike is in progress, he is guilty of a misdemeanor. While such statutes may not apply to public agencies, legal counsel would be well advised to review such provisions before advertising for assistance during the course of a strike.

- (d) Developed special instructions to the school principal and provided him with standby operating procedures, and provided suggested methods of meeting anticipated difficulties. The need for this type of planning cannot be overemphasized. Experience proved that, although the planning which we did in this area was good, not enough effort was made to define, and provide solutions for, anticipatable problems. Many of the really critical problems developed on the school site, and unless a principal has had experience in the techniques of confrontation and militant group activity, he is not able to effectively deal with the problems without outside help and counsel.

I might make another comment, also, on the role of the principal during a strike. He is truly the man in the middle. In the Los Angeles strike situation, he had to operate the school when one-half of his teachers were outside seeking to close it down. He has had to deal with angry parents and community groups supporting the strikers and other angry parents and community groups supporting the School District. It has been necessary for him to conciliate differences, frequently very bitter differences, among his faculty members after the termination of the strike. Not infrequently he has been required to assist in gathering evidence, and sometimes testify, against members of his teaching staff, because of their picket violence or other

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disruptive activity during the strike.

While his role sometimes appears to him to be an ambiguous one, he is nevertheless a part of management and must, in every instance, carry out the policies of that management.

- (e) Anticipation of the nature and extent of support which non-teaching employees will provide to the strikers. That is to say, contingency plans must be developed in case bus drivers, custodians, cafeteria employees and others whose assistance is needed in order to keep the schools open, decide to honor the picket lines or otherwise refuse to carry out their responsibilities. In addition we had to anticipate the possibility that segments of organized labor would sanction the strike, and if so, whether such sanctions would cut off the delivery of essential supplies to the schools. Further, it is necessary to identify other groups and organizations who will be probable allies of the strikers. In this area experience shows that we could anticipate parent organizations, members of the news media, and certain elected officials would provide assistance to the teachers' organization and to the strikers.
- (f) A decision as to whether or not an injunction would be sought, what kind of activities would be enjoined, and who would be served. When seeking an injunction, the School District recognized that it had an obligation to the courts, should the injunction be violated, not to permit potential contempt proceedings to be negotiated away in any strike settlement. We recognized the importance of pointing out to the Board of Education that if it decided to seek an injunction, it should be prepared to enforce the injunction against every violator, recognizing that the teachers' organization would probably ignore the injunction and that the School District would be required to proceed against the union leadership by way of contempt proceedings.

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- (g) Anticipation of difficulties which might be created by striking teachers for non-striking employees and the development of plans to protect employees should such difficulties arise. Included within this area were such items as the possibility of punitive action taken by other unions against non-striking employees in connection with their after-school employment, damage to vehicles in school parking lots, and withholding by striking teachers of necessary items such as class roll books, and classroom and closet door keys.
- (h) The development of specialized communications, and the expansion of existing communications media, with non-striking teachers and the general public. This is an extremely important area. We should recognize that collective bargaining as it relates to the public schools is a multi-party, or multi-faceted, process, where each of the two principals, while negotiating with each other, are carrying on a kind of negotiation process with the voters, the taxpayers, the uncommitted teachers, and with parent groups. The interests of all of these groups must be considered in the bargaining process. As a matter of fact, one party or the other may openly seek an alliance with one or more of these other, collateral parties.
- (i) The development of a plan for picket line control, particularly as picketing may relate to access to the school plant by pupils and non-striking teachers, the propagandizing of students, and the harassment of non-striking teachers. While this item of strike planning relates to the development of instructions and assistance to the school principal, it is of sufficient importance to receive independent consideration.

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- (j) The development of a procedure for the continuous exchange of information among that portion of the administrative staff which must make decisions in relation to the strike. With the district as large as Los Angeles, and being partially decentralized with some of the important administrative offices physically separated from the central administrative office, it was necessary for the top administrative staff, among other things, to meet every morning at 7 o'clock and for the superintendents in each area to meet every evening.

Strike Activities. The organization was successful in gaining the support during the first week of the strike of 13,200 teachers. This figure declined slightly almost daily until May 13, the last day of the strike, when the number of teachers out on strike was approximately 10,650.

The teachers' organization conducted the strike mainly from its office building and maintained the usual strike coordination activities at that location. Generally, UTLA divided the 615 schools into a number of "clusters", each of which was assigned a cluster leader. Each school was in turn assigned a strike or picket captain.

Meetings of picket captains for each cluster took place almost daily with their cluster leader. Instructions, leaflets and other literature were distributed to the captains for dissemination at their individual schools. Combined with other communications provided by the UTLA offices, this communication network appeared to operate in an efficient manner.

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There were also meetings from time to time, in various areas of the School District, designed to maintain the enthusiasm of the striking teachers and to provide them with an opportunity to hear statements directly from the organization's leaders.

Generally, the striking teachers, on or off the picket lines, conducted themselves in a lawful manner and were not discourteous or hostile to the non-striking teachers. However, in some cases, the harassment of non-strikers took all of the varied forms that ingenuity and the intensity of the situation could develop. Included were threats of immediate and subsequent physical harm, late night telephone calls, damage to automobiles, verbal and written insults, the blocking of exits and entrances to faculty parking lots, advice to students, particularly on the secondary level, that they should disrupt classrooms and create other problems for non-striking teachers, and generally generating and encouraging disrespect in students for non-striking teachers. A number of individual criminal and civil actions between striking and non-striking teachers have resulted from this kind of activity.

Although approximately half of our teaching staff was out on strike during the four and one-half weeks of the strike, a large number of students also decided not to attend school during the strike period. While the absence of pupils hurt

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us from the standpoint of receiving state apportionments based on the average daily attendance of pupils, it provided some relief to the badly understaffed schools.

In order to meet the staffing problems created by the strike, the school developed local plans to meet their individual needs. These plans were surprisingly effective in most instances, and included the following:

- (a) The giving of priority attendance to 9th and 12th graders on the secondary level and the teaching of different grades on different days.
- (b) The holding of legally minimum sessions in the morning and in the afternoon at the elementary schools.
- (c) The holding of classes only for those children whose teachers were not striking or where substitutes were available (this procedure had the unintended, but desirable, result of directing parental pressure against the striking teachers).
- (d) The utilization of alternate plans of operation depending upon the number of teachers present. That is to say, some schools had a plan "A", a plan "B", and a plan "C" which could be put into operation immediately in the morning depending upon the staff available to the school.

Many schools operated with a full program and with no loss of time at all, because few, if any, teachers were on strike.

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The strike plan, which we developed, mentioned earlier, worked very well and permitted us to avoid a number of potentially serious problems.

LEGAL EFFORTS

On April 13, the morning of the strike, we sought and obtained a temporary restraining order prohibiting the strike and direct activities in support of the strike. As we all know, the restraining order must be served on each individual who is to be enjoined before it has any legal effect. Because the organization's leaders knew that we intended to serve only them and the organization, they took up residence in a hotel and conducted strike coordination activities from that location. We had difficulty locating them, and therefore were not able to complete the making of service until late Tuesday afternoon. In the meantime, the organization's leader had made a number of heroic statements on television and over the radio and were genally advising the striking teachers that they would violate the injunction, that it was probably unconstitutional and would be tested through later court procedures, and that the strike would go on regardless of the restraining order or any other injunctions which might be obtained.

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Based upon a number of such television presentations, we brought the leadership in on a show cause hearing re contempt and showed the various television films to the Court. The Court felt, and I think correctly, that a union leader could not be held in contempt of court for engaging in verbal heroics and campaign rhetoric.

We thereupon set out to develop evidence of specific and concrete conduct on the part of the leadership which could be shown to be clearly in violation of the restraining order. We engaged a firm of private investigators and installed certain loyal teachers in the UTLA headquarters. By the time of the hearing on the preliminary injunction, which was obtained on May 4, we had enough evidence for successful contempt proceedings.

For a variety of reasons, the trial on the order to show cause re contempt was put over until last September. In the process of developing stipulations as to foundational material with the lawyers for UTLA, it became apparent to them that we could prove, without question, a number of violations of the TRO and of the preliminary injunction. In order to avoid the time and expense of a trial, the organization agreed to stipulate that it and its leaders had committed 12 violations of the restraining order.

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This stipulation was presented to the Court, which had the option of sentencing each defendant to 5 days in jail for each violation, assessing a fine of \$500 for each violation, or both. The Court decided not to sentence the leaders to jail as it appeared to the judge that some of them were seeking a martyrdom status and that a jail sentence would serve no purpose. He did, however, assess the maximum fine.

NEGOTIATIONS DURING THE STRIKE

With the commencement of the strike on Monday morning, April 13, the Superintendent instructed the negotiator to terminate any further negotiations with the Negotiating Council representatives (UTLA) and not to recommence until the strike had been terminated. After about a week, however, the pressures on the Board of Education to recommence negotiations became so intense that the Superintendent recommended to the Board that the services of a mediator be obtained.

We first sought the assistance of the Federal Mediation and Conciliation Service. However, that body indicated that it could not provide assistance unless the parallel state organization would permit the introduction of the federal service in a local dispute. Before any attempt was made

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to contact the state service, negotiators for the Board and UTLA decided, on April 23, to retain an independent expert of national reputation. This mediator met with the parties jointly and individually almost daily from April 27 through May 2. He was, however, unable to develop a realistic base for the resumption of negotiations and stated that he would withdraw unless each party could develop and submit to him, by May 6, an agreement which reasonably promised to be acceptable to the other side. It was his proposal that from the two agreements he would develop a third proposal which both parties could accept.

The Board of Education, and presumably UTLA, presented the mediator with a proposed agreement, and on May 8, he provided to each party his own third form of a proposed settlement agreement. While the mediator intended to withdraw at this point, the Board and UTLA persuaded him to remain and to assist both parties in coming to final agreement on the mediator's proposal.

Finally, after two extremely lengthy mediation sessions, one of which lasted until 5 a.m. of the morning of May 12, the Board of Education and UTLA agreed upon a proposed contract. On Wednesday, May 13, UTLA announced the termination of the strike, and the striking teachers returned to work on the following day.

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AFTERMATH OF STRIKE

While the Board of Education and UTLA were satisfied with the settlement agreement, many teachers and taxpayers were not. While the Board was preparing to publicly present and adopt the proposed contract, rival teachers' groups and taxpayers sought and obtained a preliminary injunction against the adoption and implementation of the contract. Although we obtained a relatively early trial date on the matter, the Board felt that the agreement, as finally developed, was a good one and should be implemented even if it could not take the form of a binding, bilateral contract. The Board caused the substance of the contract to be put into the format of a Board rule, and proceeded to deliberate on the adoption of the agreement in that form.

However, another taxpayers' group filed a separate lawsuit seeking to enjoin the Board from adopting the settlement agreement in the form of a Board rule or policy. Much to our surprise, the Court issued a restraining order on May 28 on the basis that the proposed rule had not received adequate distribution among the employees who would be affected by it.

We thereupon printed and distributed to the various schools and offices over 3,000 copies of the proposed rule. Nevertheless, the plaintiffs were successful in extending

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the restraining order on two subsequent occasions, and the Board decided that it would not attempt to deliberate further on the adoption of the rule until a trial was held on the merits of the action.

The trial commenced in the middle of July on 4 of the 5 lawsuits which arose out of the strike, including those challenging the validity of the proposed contract and the proposed rule, and continued through the middle of August. The Court held against the Board of Education in every lawsuit and on each of the issues. The thrust of the Court's decision was that the Board, lacking statutory authority to engage in collective bargaining and having nevertheless done so in an effort to settle an illegal strike was, in its effort to enter into a settlement contract, seeking the fruit of the poison tree, and that the contract was, therefore, in violation of public policy. Further, the Court held that in each important instance, the proposed contract illegally delegated portions of the Board's authority to the teachers' organization.

The Board has decided to appeal from the decision and to seek from the State Supreme Court a writ of prohibition prohibiting the trial court, pending the course of the appeal, from entering a judgment and issuing an injunction restraining the Board from adopting the substance of the contract as a Board rule.

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The strike has also produced negative results among the teaching staff. The divisiveness within teacher ranks which developed during the strike has severely hurt faculty morale at many schools. Militancy during the strike caused significant emotional wounds, many which continue to fester. In some instances, principals predict that it will take several years to heal the hard feelings engendered by the strike.

Aside, however, from the problems in the area of faculty morale, the District and the pupils, many believe, suffered very little as a result of the strike.

Make-up time was provided for those students who missed classes and the District actually saved approximately \$11 million in salaries as a result of not paying the teachers who were out on strike.

CONCLUSION

Strikes of public employees cannot be effectively prohibited by anti-strike legislation or by court injunctions. The teachers' organizations are not deterred by the threat of contempt proceedings or by public condemnation. New approaches and techniques are needed, some of them are being developed. Collective bargaining or employer-employee relations in the public sector is entering a decade in which will exist an intense need for thoughtful and comprehensive legislation to deal effectively with growing public employee

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unionism. I think it is obvious to everyone that the 1970's will see nearly as many changes in employee relations in the public sector as the 1930's brought forth in the private sector. This increase in activity in the public sector will take place for a number of reasons. One of the principal reasons is that there are approximately 20 million unorganized employees in the white collar, technical, and clerical-type positions. Many of these positions are in government. The potential income through payroll checkoffs to labor organizations, coupled with the gradual loss in blue collar membership, constitutes a compelling reason for union organizing drives. Another principal reason for increased activity in the 1970's is that today's students, who will be the managers and employees of tomorrow, have already been involved in collective action on the campus and believe in that technique as an effective tool for change. They will carry this attitude with them into governmental service.

Legislation in the public sector will be needed to:

- (a) Carefully define the nature of the bargaining unit
- (b) Describe the scope of, or objectives to be involved in, the bargaining or negotiating process
- (c) Develop effective restrictions on strike activities such as:
 - 1. Mandatory loss of checkoff privilege for 6 months to a year after the strike

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2. A substantial statutory penalty that cannot be negotiated away in the strike settlement.

- (d) Develop an effective means of adjusting employee grievances. None of the procedures presently utilized, including fact-finding and advisory or compulsory arbitration, have been satisfactory either to public agencies or to employee groups.

Since school districts are apparently headed toward some form of collective bargaining or collective negotiations with their teachers and other employees, attention should be given, as the process develops, as to whether collective bargaining and the increased demand for greater control over working conditions, salaries, and educational programs and objectives, will actually benefit the students.

If administrators and teacher groups are polarized into warring camps, the quality of education cannot help but suffer. Collective bargaining offers no cure all for the problems besetting education, and there is nothing inherent in it which will bring about the needed improvements in education.

Collective bargaining or collective negotiations can work and can avoid being a negative and a uselessly complicating factor if both parties desire the process to work and understand its limitations. Certainly if it does not become a productive factor in education, other approaches will be developed, as the public's desire for educational improvements is unyielding.